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Nos. 83-498 & 83-573

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

G. MICHAEL BROWN, DIRECTOR DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY, *et al.*,

Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,

Appellees.

MARTIN DANZIGER, ACTING CHAIRMAN, THE CASINO CONTROL COMMISSION, STATE OF NEW JERSEY, *et al.*,

Appellants,

v.

HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, *et al.*,

Appellees.

On Appeals from the United States Court of Appeals for the Third Circuit

---

APPENDIX TO BRIEF FOR APPELLEES

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EXCERPTS FROM PLAINTIFFS EXHIBIT 1 IN HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS INTERNATIONAL UNION LOCAL 54, et al. v. G. MICHAEL BROWN, DIRECTOR, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF GAMING ENFORCEMENT, STATE OF NEW JERSEY, et al. (UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, No. 81-2630)

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[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

September 24, 1980

Bernard Katz, Esq.
Meranze, Katz, Spear and Wilderman
Lewis Tower Building
NE Cor. 15th and Locust St.
Philadelphia, Pa. 19102

Re: Local 54 H.R.E./Robert Lumio

Dear Mr. Katz:

This is to confirm our telephone conversation of September 17, 1980. Robert Lumio is to appear on September 29, 1980 at the Division of Gaming Enforcement headquarters at 11:00 a.m. for an interview. Said interview is to be conducted "under oath." While counsel may accompany Mr. Lumio to the Division headquarters, counsel will not be permitted to participate in the interview or be present in the interview room when the interview is conducted. It must be emphasized that this interview is to be the interview of Mr. Lumio and not of counsel; therefore, while Mr. Lumio may, as a courtesy, be permitted to consult with counsel, said consultation may not occur as a matter of course. Further, barring any health problems of Mr. Lumio that would prevent his appearance on September 29, 1980, I expect that Mr. Lumio will appear, whether with or without counsel, on September 29. His failure to do so will be evaluated in accordance with the criteria delineated in the applicable

provisions of the Casino Control Act and the Division will take whatever action is deemed appropriate.

If you have any questions with respect to this matter, please feel free to contact me. Thank you.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

EMS:ci

cc: Robert Lumio
Secretary-Treasurer
Hotel, Restaurant and Country Club
Employees
Local #54
200 North Texas Ave.
Atlantic City, NJ

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

September 30, 1980

Eugene M. Schwartz, Esq.
Deputy Attorney General
State of New Jersey
Dept. of Law & Public Safety
Div. of Gaming Enforcement
Trenton, New Jersey 08625

RE: Robert Lumio and Division of Gaming Enforcement "Interview"

Dear Mr. Schwartz:

I was rather taken aback to receive your letter of September 24, 1980 concerning the above noted matter. I had specifically advised you that Mr. Lumio was hospitalized with a serious ailment and confined at Temple University Hospital. I advised you further that any discussion concerning Mr. Lumio's "interview" would have to await further medical developments concerning his condition.

In view of this advice, I simply do not understand your letter of September 24—received at my office well after my discussions with you in which you agreed that Mr. Lumio was not to appear.

Normally, therefore, I would conclude that your other comments were academic and would not bother with any further detail in this communication. However, I find the conditions which you set forth and the tone of your communication both offensive and wholly unwarranted.

I earlier wrote to you inquiring as to what provision of the law authorized you to conduct the curious type of proceeding which you were suggesting—indeed, demanding.

Subsequent to my correspondence—which has still gone unanswered by you—I stated to you that I had not encountered the type of proceeding which you were demanding since reading about the office of the Grand Inquisitor in the 15th Century. Your letter of September 24, 1980, "demands" that without any stated cause and without any judicial proceedings, a union official be placed in a private room with you and your colleagues. You demand that the union official, without any prior knowledge of what will be asked, respond under oath to any questions put to him and that he do so without benefit of either his own counsel in the room or any other person to protect and represent his interests. Your audaciousness in then stating that a failure or refusal to submit to a procedure found earlier in medieval Spain will then require that ". . . whatever action is deemed appropriate" is really beyond further comment.

I would appreciate a response to this letter as well as a response to my earlier communication. In the meantime, I shall, of course, advise you when Mr. Lumio is sufficiently recovered so as to make this interchange more than "academic."

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By BERNARD N. KATZ

BNK:maf
UIW/SIU
C.M.R.R.R.

[SEAL]

State of New Jersey
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
CN 047
Trenton, New Jersey 08625

October 6, 1980

Bernard Katz, Esq.
Meranze, Katz, Spear and Wilderman
Lewis Tower Bldg.
N.E. Cor. 15th and Locust Street
Philadelphia, Pa. 19102

Re: Robert Lumio

Dear Mr. Katz:

I am in receipt of your letter dated September 30, 1980 which was written with respect to the above subject. Perhaps I misunderstood our conversation concerning the interview that the Division of Gaming Enforcement wanted to have with Mr. Lumio; however, I was not under the impression that there was no possibility that Mr. Lumio would be able to appear at Division headquarters on September 29. Thus, the issuance of my September 24, 1980 letter. Indeed, that is why my letter referred to his health problems.

I cannot understand your assertion in your letter that I have not responded to the substance of your inquiries concerning the propriety of the Division's procedure with respect to investigative interviews. Rather, you and I have discussed the said procedures and I have explained to you applicable provisions of the Casino Control Act. Additionally, you should be advised that the Division procedure with respect to said interviews passes constitutional muster.

The Division is still desirous of interviewing Mr. Lumio. Accordingly, I would appreciate your advising me when he leaves the hospital in order that we may schedule the interview. Furthermore, in this regard, in order that I may maintain an accurate and complete file on this matter, please forward to me a copy of Mr. Lumio's medical records with respect to his present medical condition.

I thank you in advance for your anticipated cooperation.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

EMS:ci

October 13, 1980

Eugene M. Schwartz
Deputy Attorney General
State of New Jersey
Department of Law & Public Safety
Division of Gaming Enforcement
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio

Dear Mr. Schwartz:

This will acknowledge receipt of your letter of October 6, 1980. There is really not too much purpose to be served by a continued exchange of correspondence at such time as Mr. Lumio is released from the hospital and we may conclude what, if any, further arrangements are appropriate.

For your general information, it has been necessary to have Mr. Lumio removed from Temple University Hospital and transferred to Pennsylvania Hospital. We are hopeful that his condition will see improvement in the future.

I am curious about what seems to be a continuous reluctance on your part to give me a clear and direct response to my questions. I asked you in my first letter as well as during our telephone conversations just where there appeared any statutory or other authority for your Department to require that a non-employee (or an employee) of a casino present himself (or herself) at your office, be taken to a private room without counsel and then, to be required to submit to questioning under oath in the presence of you and your colleagues—but without any representation or other protections on the part of the person being questioned.

You state that this "procedure" passes "constitutional muster". Although I do not pretend to be an expert in

that field, I have serious reservations about the accuracy of your statement. This reservation becomes more pronounced when re-reading your statement that although a witness may leave the room to consult with counsel on some questions—he may not leave the room to consult with counsel on all questions or questions which you regard as not warranting the outside consultation. Your October 6, 1980 letter leaves me no less offended by this modern day star chamber inquisition type of procedure than I found myself upon first being advised of your intentions.

I shall contact you further when Mr. Lumio regains his health—a condition which we all hope will occur in the near future.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

BERNARD N. KATZ

BNK:jmb
UIW/SIU

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

December 2, 1980

CERTIFIED MAIL—RRR

Robert Lumio
Secretary-Treasurer
Hotel, Restaurant and Country Club Employees
Local Number 54
200 North Texas Avenue
Atlantic City, New Jersey

Dear Mr. Lumio:

By letter dated August 26, 1980, the Division of Gaming Enforcement notified you that it was necessary that you be interviewed by Division personnel with respect to the registration process pending before the Casino Control Commission pertinent to the labor union with which you are associated. That interview, which was to be scheduled for September 17, 1980, was adjourned at the request of your attorney. However, the re-scheduled interviewed which was to take place on September 29, 1980 was also adjourned as a result of your medical condition. Although your interview was postponed to a date uncertain, the Division remained desirous of effectuating an interview with you. It now appears that you are no longer hospitalized. Thus, the Division wants to complete the interview process. Accordingly, please be advised that you are to appear at the Division of Gaming Enforcement headquarters located at 2465 South Broad

Street in the Independence Mall Shopping Center in Trenton, New Jersey on December 12, 1980 at 10:00 a.m. The interview will be conducted at that time. Please note that you will be under oath during the interview. This interview is a necessary component with respect to the Division review of the credentials of the above-named labor organization.

I anticipate seeing you at Division headquarters on December 12, 1980. If you have any questions about this matter, please feel free to contact me.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

EMS:ci
cc: Bernard Katz

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

December 8, 1980

Eugene M. Schwartz
Deputy Attorney General
Division of Gaming Enforcement
Department of Law & Public Safety
State of New Jersey
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio and Casino Control Commission

Dear Mr. Schwartz:

I am in receipt of your rather presumptuous letter of December 2, 1980. You behave as if you and I have not exchanged prior correspondence and as if you and I have had no prior discussions concerning this matter.

Frankly, I do not understand the attitude reflected by your correspondence and by your position. This attitude is made more offensive by behavior such as that exhibited by your Sergeant McLaughlin in his telephone call to me expressing cynical and snide reactions to my description of Mr. Lumio's physical problems. I do not appreciate the "wise-guy" attitude of some of your colleagues and the insensitive, almost arrogant response to a serious and grave illness.

As simply as can be stated, you are to understand that the question of whether or not Mr. Lumio will submit to your star chamber type of proposed proceeding is at this time academic. He is in no condition to participate in

any interview under oath or other formal investigation scheduled for December 12, 1980.

Up until recently, Mr. Lumio was confined to Pennsylvania Hospital at which place he had been for an extensive period of time undergoing radical treatment. He is still continuing the treatment which includes, among other things, chemotherapy. I earlier had offered to you, and I similarly offered to your Sergeant McLaughlin, the right of access to Mr. Lumio's medical records at Pennsylvania Hospital or at Temple University Hospital at which institution he had his initial stay.

If you have any reservations concerning the authenticity of his physical condition, you are free to use this letter to review the medical records at either hospital which you desire—Pennsylvania Hospital being the more relevant.

At the present time, Mr. Lumio is in a convalescent and treatment status. He simply is not able to undertake the rigors of travelling to Trenton and participating in the procedure which you desire. At such time as he is in a condition of so participating, he and I will proceed to Trenton together. We will, at that juncture, take up with you the question of whether of not we will submit to the inquisitorial type of questioning which you propose. I indicated to you before that as an attorney who has regard and respect for the system under which we function, and who has participated in all types of administrative proceedings for more than twenty-five years, I am shocked and appalled at your position that you have a right to isolate a person with whom you desire an interview and to require that such person submit to closed closet, under oath questioning in a room from which his attorney is barred and which is peopled only by you, your own staff and the person being questioned. Every fiber of my training as an attorney,

schooled with respect for constitutional rights and protections, along with basic fairness and decency, is irritated by your proposal.

I had earlier requested—as a matter of fact, on several occasions—some guidance from you in understanding where you receive the legal basis for making the demands which you did. As I read the Casino Control Act, the powers therein granted do not seem to be superior to those of a Grand Jury. They do not seem to encompass a right to conduct the type of 15th Century procedure which you are contemplating. I am appalled—and have so expressed to you on several earlier occasions—that you would see fit to insist upon placing a witness in a closed room, barring his attorney, deciding for yourself when and on what occasions he may consult his attorney outside of the room, and putting to him questions under oath which he will be required to answer—witnessed only by you and your own colleagues. This procedure violates every conceivable element of a free and democratic society.

I do not intend to conduct a correspondence dispute on the curious philosophies which you are reflecting. It is at this juncture academic. As soon as Mr. Lumio is physically able to participate in any "interview" procedure, I shall again be in touch with you for purposes of determining the format of such a procedure.

In the meantime, it is important that you respond to my repeated inquiries—under what provisions of the law do you contend you are empowered to insist upon the procedures which your earlier correspondence and

telephone communications describe? Please let me hear from you at your earliest convenience.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

BERNARD N. KATZ

BNK:jmb
UIW/SIU

cc: John J. Degnan,
Attorney General
G. Michael Brown,
Director

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

December 15, 1980

Bernard N. Katz, Esq.
Meranze, Katz, Spear and Wilderman
N.E. Corner 15th & Locust Street
Lewis Tower Building, 12th floor
Philadelphia, Pennsylvania 19102

Re: Robert Lumio

Dear Mr. Katz:

I am in receipt of your correspondence of December 8, 1980, addressed to Deputy Attorney General Eugene Schwartz, Supervising Attorney of the Service Industry Licensing Section. Representatives of this Division have spoken to two physicians who have treated Mr. Lumio. We received similar reports from both of the physicians indicating, in their medical opinion, they would have no objection to Mr. Lumio submitting to a formal interview with the Division of Gaming Enforcement.

I find the remainder of your letter to be so unprofessional that it does not warrant a response. If Mr. Lumio is to be represented before the Casino Control Commission, I suggest that he be represented by an attorney

admitted to the practice of law in the State of New Jersey.

Very truly yours,

/s/ G. Michael Brown
G. MICHAEL BROWN
Director

GMB:cat

cc: John J. Degnan, Attorney General
Eugene Schwartz, Deputy Attorney General

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

December 26, 1980

G. Michael Brown, Director
Division of Gaming Enforcement
Department of Law & Public Safety
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio

Dear Mr. Brown:

Your letter dated December 15, 1980 was delivered to my office on December 23, 1980. I attempted to ascertain the accuracy of the report given to you and to which you make reference in the first paragraph of your letter.

In view of the fact that you do not name the physicians nor the persons who have spoken to them, it was difficult to properly check out the information which you state you have received. If you could advise me of the names of the doctors and the identity of your representatives who spoke to them, I will be in a better position of ascertaining whether there is any reason to believe that Mr. Lumio is physically capable of participating in the procedure which you are proposing. I can only assure you that the information given to me to date indicates the contrary that Mr. Lumio is being required to return to the hospital and anticipates a further confinement.

However, I will certainly review such facts as you indicate you have concerning his physical condition and

consult with the doctors whose names I assume you will forward to me.

The second paragraph of your letter is offensive and I am able to find nothing in the law which insulates your office and the functioning of your department from appropriate criticism and questioning. Rather than react as you did in your letter of December 15, 1980, you would have been better advised to have responded to my questions which I have put on several occasions to your colleague, Mr. Schwartz. I simply do not understand the insistence upon the interrogation procedure which was described to me and about which I have been protesting. I reiterate my original inquiries—under what statutory or other provision have you based a procedure which requires a witness to testify under oath, in a private room, unaccompanied by his counsel, and in the presence solely of the Deputy Attorney General and his various assistants?

The abuses which can flow from such a proceeding would seem self-evident and obvious to even the most untutored observer. I do not intend to belabor the point any further. The entire situation is beginning to reflect some rather curious difficulties in communication of basic concepts. At the present time, because of Mr. Lumio's physical condition and until that issue is resolved, the problem would seem academic. I can assure you that I will follow up on the physical condition questions upon receipt of the information which I have requested from you. At such time as Mr. Lumio is in a position of responding to your interrogation, we shall determine whether we will insist upon counsel being present with Mr. Lumio during the questioning procedure. Again—in order to avoid unnecessary controversy—I repeat the question which I have been posing to your office—under which statutory or other authority do you base your claim that you have a right to exclude counsel from the under oath interrogation procedure and situs?

I find the last portion of the final sentence in your letter to be both irresponsible and an affront and I hereby formally request that you apologize for the statements and inferences contained in the last sentence of that letter and that you retract that statement with a prompt communication to me and copies of such retraction to all persons who received copies of your December 15, 1980 letter.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

/s/ B.N.K.
BERNARD N. KATZ

BNK:jmb
UIW/SIU

cc: John J. Degnan, Attorney General
Eugene Schwartz, Deputy Attorney General

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

December 30, 1980

Bernard N. Katz, Esq.
Meranze, Katz, Spear and Wilderman
Lewis Tower Building, 12th floor
N.E. Corner 15th & Locust Street
Philadelphia, Pennsylvania 19102

Re: Robert Lumio

Dear Mr. Katz:

I am in receipt of your letter of December 26, 1980. Representatives of this Division interviewed Dr. Edward Viner on December 2, 1980, and Dr. Richard Smalley on November 25, 1980.

Very truly yours,

/s/ G. Michael Brown
G. MICHAEL BROWN
Director

GMB:cat

cc: John J. Degnan, Attorney General
Eugene Schwartz, Deputy Attorney General

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January 8, 1981

G. Michael Brown
Director
State of New Jersey
Department of Law & Public Safety
Division of Gaming Enforcement
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio

Dear Mr. Brown:

Mr. Lumio is presently again confined at Pennsylvania Hospital. I personally visited him in Room 422 and was advised that he is expected to be confined there for at least the next two to three weeks.

At such time as he has been released from the hospital, I shall further contact your office concerning his condition. In the meantime, you should know—and if your investigators, in fact, inquired in any depth into Mr. Lumio's condition—you are aware—that he has been receiving massive and traumatic chemotherapy and all types of radical treatments designed for the serious condition which afflicts him.

As I earlier advised your colleague, these treatments have been going on during the course of our interchange of correspondence, hence making the various insistences reflected in your letters rather difficult to understand. In the meantime, I would appreciate some response and

answers to the various questions which I have posed in my correspondence to your office.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

/s/ B.N.K.
BERNARD N. KATZ

BNK:jmb
UIW/SIU

attachment

cc: John J. Degnan, Attorney General
Eugene Schwartz, Deputy Attorney General

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

January 12, 1981

CERTIFIED MAIL

Robert Lumio
Secretary-Treasurer
Hotel, Restaurant and Country Club Employees
Local Number 54
200 North Texas Avenue
Atlantic City, New Jersey

Dear Mr. Lumio:

Please be advised that you are to appear at Division of Gaming Enforcement headquarters, 2465 South Broad Street in the Independence Mall in Trenton, New Jersey, at 10:00 a.m. on January 23, 1981 for the purpose of being interviewed under oath by Division of Gaming Enforcement personnel. I look forward to seeing you at that time.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

EMS:ci

cc: Bernard Katz, Esq.
Certified Mail

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MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

January 20, 1981

Eugene M. Schwartz
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement
Trenton, NJ 08625

RE: Robert Lumio

Dear Mr. Schwartz:

You, apparently, sent a letter dated January 12, 1981 to Mr. Lumio at his office address in Atlantic City. You declared in that letter that he is to appear on January 23, 1981 to be interrogated under oath by your Department. Your letter also shows that a carbon copy purports to have been sent to me.

I direct your attention to the interchange of correspondence which has been going on over the past weeks, copies of which have been dispatched to your attention. You should know from that correspondence that Mr. Lumio is in the hospital and as of this writing is still confined. You should further know from that correspondence that he was in the hospital on the date that you dispatched your January 12, 1981 letter. I also point out to you that although the letter to Mr. Lumio indicates a copy to me that as of this date no such copy has been received.

I would suggest that in the future before you unilaterally make arrangements such as appear in your

letter that you first telephone me. As would seem obvious, Mr. Lumio is not in a position of responding to your communication at this time. At such time as he is released from the hospital, I shall contact you in order to discuss the appropriate arrangements for the questioning of him.

If you have any further questions, please contact me. In the meantime, I again request some response to the questions which I have been posing in my correspondence to you and to Mr. Brown and which as of this date have still gone unanswered.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By: BERNARD N. KATZ

BNK:ckt
UIW/SIU

cc: G. Michael Brown, Director
John Degnan, Attorney General

TEMPLE UNIVERSITY
of the Commonwealth System of Higher Education
HEALTH SCIENCES CENTER
Philadelphia, Pennsylvania 19140

Department of Medicine
Section of Hematology and Oncology

January 16, 1981

Mr. Bernard M. Katz
Meranze, Katz, Spear and Wilderman
Twelfth Floor
Lewis Tower Building
N. E. Cor. 15th and Locust Streets
Phila., PA 19102

Re: Robert Lumio

Dear Mr. Katz:

In response to your letter of January 9, as you indicate, I was interviewed by Sargeant McLaughlin of the New Jersey State Police on November 18, 1980. Sargeant McLaughlin showed me his identification and gave me a photostat of a notarized release signed by Mr. Lumio authorizing release of information to the New Jersey State Gaming Commission. I indicated to Sargeant McLaughlin that Mr. Lumio had been a patient in the Temple University Hospital, that he was admitted with a diagnosis of cellulitis of the great toe and acute lymphatic leukemia, that he was placed under treatment for both of these conditions here and that he had been responding to treatment at the time that he voluntarily left our care and sought medical attention at Pennsylvania Hospital under the care of Dr. Ed Viner. I further told Sargeant McLaughlin that I had received no direct word from Dr. Viner regarding Lumio's future course following admission to Pennsylvania Hospital but that I had heard indirectly that Mr. Lumio had subsequently gone into a complete response as regards his acute leukemia. I indi-

cated to Sargeant McLaughlin that, in general, patients who are in complete response and continuing under treatment for their acute leukemia are symptomatically and physically well and in general are able to function. I told Sargeant McLaughlin that I had not seen Mr. Lumio since he left Temple Hospital and was therefore not able to offer an opinion as to whether or not Mr. Lumio was functioning normally and whether or not he would be able to partake in any sort of testimony. I referred Sargeant McLaughlin to Dr. Viner for any further information.

I hope this information is satisfactory. By the way, you indicate in your letter that Mr. Lumio is still under my care. He left our care on Oct. 7th and sought treatment elsewhere.

Please call if you need further information.

Sincerely yours,

/s/ R. V. Smalley, M.D.
RICHARD V. SMALLEY, M.D.

RVS/dao

January 23, 1981

Eugene M. Schwartz,
Deputy Attorney General
State of New Jersey
Department of Law & Public Safety
Division of Gaming Enforcement
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio

Dear Mr. Schwartz:

In accord with our conversation on Tuesday, January 20, 1981, I am enclosing herein a xerox copy of Dr. Smalley's letter to me. You will note that its contents are contrary to the report which apparently was submitted to your Department.

I would appreciate your directly any further correspondence which is to go to my attention to my Lewis Tower Building address. The mail will be more expeditiously handled in that fashion. Our Atlantic City address is no longer the Atlantic Avenue office but is now 200 North Texas Avenue. However, for fast and more efficient responses, your use of my Philadelphia office would be appreciated.

As soon as I have received a response from Dr. Viner, I shall forward that to you as well. In the meantime, I will look forward to contacting you after Mr. Lumio's discharge from the hospital.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

BERNARD N. KATZ

BNK:jmb
UIW/SIU

enc.

cc: John J. Degnan, Attorney Gen.
G. Michael Brown, Director

VINER/DANIELS MEDICAL ASSOCIATES
Pennsylvania Hospital
727 Delancey Street
Philadelphia, Pennsylvania 19107

Telephone 829-3523

23 January 1981

Bernard N. Katz, Esq.
12th Floor, Lewis Tower Bldg.
N.E. Corner 15th & Locust Sts.
Phila., Pa. 19102

Re: Robert Lumio

Dear Mr. Katz:

I was interviewed by someone from the Division of Gaming Enforcement sometime during December. At that time I indicated that Mr. Lumio had an acute leukemia and that he had been very seriously ill. I further indicated that he was in a period of remission and that whether or not he could appear and testify was dependent upon how he felt at the specific time at issue. In general, how patients feel during their remission periods is quite variable, often they feel well enough to tolerate such an interrogation and at other times they may have significant fatigue and a sense of debility.

To clarify further with respect to Mr. Lumio and to bring you and everyone else up to date, at this very moment, he is in the hospital receiving x-ray therapy to his brain and injections of chemotherapy into his spinal fluid via a series of six spinal taps. This is in an attempt to prophylax against the possibility of future recurrence of his acute leukemia. Certainly, at the present moment he is totally unable to undergo an appearance in Trenton for these treatments have rendered him quite uncomfortable and debilitated. He is currently fatigued, having

headaches and low back pain as a result of the therapy. There are also slight changes in his blood count which worry me a bit concerning the possibility that he may be developing a recurrence of his leukemia.

Thus, irrespective of my statements at the time of the visit of the government representative, at this time, Mr. Lumio is certainly unfit for such a proceeding and will remain so for the immediate future at least. The only way I can be fair to you, both, the patient and the government here, is to make statements periodically concerning his situation at that time for I can make no statement that will be meaningful more than several weeks hence at any point in such a medical circumstance.

If there are further questions, please let me know.

Sincerely yours,

/s/ E. D. Viner
EDWARD D. VINER, M.D.

EDV:kmr

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

February 4, 1981

Certified Mail

Robert Lumio
Secretary-Treasurer
Hotel, Restaurant and Country Club Employees
Local Number 54
200 North Texas Avenue
Atlantic City, New Jersey

Dear Mr. Lumio:

As it appears that you are no longer hospitalized at the University of Pennsylvania Hospital, please be advised that you are to appear at Division of Gaming Enforcement headquarters, 2465 South Broad Street in the Independence Mall in Trenton, New Jersey, at 10:00 a.m. on February 13, 1981 for the purpose of being interviewed under oath by Division of Gaming Enforcement personnel. Additionally, please note that I have enclosed herein a fresh "Release Authorization". Please sign it, have it notarized and return it to me, as expeditiously as is possible, in the enclosed reply envelope.

I thank you for your attention to these matters and I look forward to seeing you on February 13.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

EMS:ci
Encl.

cc: Bernard Katz, Esq. (w/att.)
Certified Mail

RELEASE AUTHORIZATION

To All Courts, Probation Departments, Selective Service Boards, Employers, Educational Institutions, Banks, Financial and Other Institutions, and all Governmental Agencies—federal, state and local, without exception, both foreign and domestic.

I have authorized the New Jersey Casino Control Commission and the New Jersey Division of Gaming Enforcement to conduct a full investigation into my background and activities.

Therefore, you are hereby authorized to release any and all information pertaining to me, documentary or otherwise, as requested by any appropriate employee, agent or representative of the Division of Gaming Enforcement or the Casino Control Commission.

This authorization shall supercede and countermand any prior request or authorization to the contrary.

A photostatic copy of this authorization will be considered as effective and valid as the original.

DATE: _____ _____ L.S.

Subscribed and sworn to before me

on this ____ day of _____,

19—.

Notary Public

State of _____

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

February 4, 1981

Eugene M. Schwartz
Deputy Attorney General
Department of Law and Public Safety
Division of Gaming Enforcement
Trenton, NJ 08625

RE: Robert Lumio

Dear Mr. Schwartz:

I am enclosing herein a Xerox copy of a letter which I have received from Dr. Edward Viner. You will note that Dr. Viner's statements are contrary to those that were reported to your Department by your investigator. This now makes the second doctor (out of two) who indicates that the comments made to your investigator were not quite the same as your investigator understood them to be. This is as kind a description as I can, under all of the circumstances, make.

I draw your attention to Dr. Viner's comment concerning Mr. Lumio's lack of fitness to presently participate in the proceeding. He does indicate that he will again review the situation in several weeks. I have written to Dr. Viner to thank him for his letter and the trouble to which he has gone and to request that he advise me at such time as Mr. Lumio is able to participate in a questioning under oath session and I will at that time then contact you further. Under the circumstances involved, and in view of the distressing illness present, I assume that this is satisfactory. Incidentally, in the meantime, I

really would appreciate some response to the other inquiries which I have consistently been making in my earlier correspondence concerning the statutory or other authority for insisting upon under oath questioning without benefit of counsel.

Thank you for your cooperation.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By: BERNARD N. KATZ

BNK:ckt
UIW/SIU

Enc.

cc: John J. Degnan
G. Michael Brown

February 4, 1981

Edward D. Viner, M.D.
Viner/Daniels Medical Associates
Pennsylvania Hospital
727 Delancey Street
Philadelphia, PA 19107

RE: Robert Lumio

Dear Dr. Viner:

Thank you for your letter of January 23, 1981 concerning your patient, Mr. Robert Lumio. I would appreciate your advising me at such time in the future that you feel Mr. Lumio is sufficiently recovered so as to participate in an under oath interrogation of the nature which has been described to you.

Again, my appreciation for your troubles.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By: BERNARD N. KATZ

BNK:ckt
UIW/SIU

cc: Frank Gerace
Robert Lumio

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

February 10, 1981

Eugene M. Schwartz,
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement
CN 047
Trenton, NJ 08625

In Re: Robert Lumio

Dear Mr. Schwartz:

This letter will confirm our telephone conversation of February 9, 1981. Your suggested date of February 13, 1981 is not available on my calendar. We tentatively set a date of February 18, 1981 for me to appear with Mr. Lumio in Trenton to meet with you. This tentative date, however, was subject to Mr. Lumio's physical capabilities. By the time you receive this letter, you certainly should have received the xerox copy of Doctor Viner's communication, indicating the problems to which Mr. Lumio is subject.

Accordingly, the question of whether or not the February 18, 1981 date is firm will depend upon Mr. Lumio's physical capabilities and Doctor Viner's advice as his physician. You will note that a carbon copy of this letter has been sent to Doctor Viner and I would request that he advise me, as a result of receiving this carbon copy, whether Mr. Lumio may appear on the February 18,

1981 date. If, in his opinion, the date should be postponed until some subsequent time more consistent with Mr. Lumio's physical condition, I would appreciate hearing so from him—if, in his opinion, it is satisfactory for Mr. Lumio to appear, we will be there as discussed. Under any conditions, I will contact you prior to February 18, 1981 to advise you of the conclusions reached.

I also remind you of the content of our discussion concerning the procedure to be used during the interview of Mr. Lumio. We have not been able to find any basis whatsoever for the peculiar position advanced that counsel may not be present in the room during the interview. On the contrary, our Research and Analysis indicates that the act does not envision this type of procedure and that, in fact, counsel should be present during the interview. Accordingly, I will anticipate that opportunity being accorded.

I have instructed Mr. Lumio—who, at the time of my conversation, had not received either your original letter of February 4, 1981 nor the enclosure—to execute the Release Authorization as soon as he has received it and to return it to you.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

BERNARD N. KATZ

BNK/kt

cc: Dr. Edward Viner

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
215-KIngsley 6-4183

February 18, 1981

Eugene M. Schwartz, Esq.
Deputy Attorney General
State of New Jersey
Dept. of Law & Public Safety
Div. of Gaming Enforcement
CN 047
Trenton, New Jersey 08625

RE: Robert Lumio

Dear Mr. Schwartz:

This will confirm our conversation on Tuesday, February 17, 1981. We agreed to postpone Mr. Lumio's appointment for questioning which had been scheduled for Wednesday, February 18, 1981. I advised you that Dr. Viner did not approve of Mr. Lumio undertaking this activity and further, that Mr. Lumio was scheduled to return to the hospital this week for further treatment. I noted Dr. Viner's telephone number and invited you, if you so desire to confirm this advice directly with him.

It is my understanding that the status of Mr. Lumio's appointment for questioning will be generally held in abeyance until such time as Dr. Viner advises us that Mr. Lumio is in satisfactory condition to participate in that type of activity.

I believe that the aforegoing accurately brings the record up to date. If there are any further questions, or if you desire any further information, please get back to me. It is my understanding that you have already received

from Mr. Lumio an executed renewed authorization to examine records and documents.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By BERNARD N. KATZ

BNK:maf
UIW/SIU
C.M.R.R.R.

CC: Dr. Edward Viner

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

CN 047

Trenton, New Jersey 08625

March 5, 1981

Mr. Frank Gerace
President
Hotel, Restaurant and County Club Employees
Local Number 54
200 North Texas Avenue
Atlantic City, New Jersey 08401

Dear Mr. Gerace:

This will confirm your interview with Division of Gaming Enforcement personnel regarding the registration process of Local Number 54.

In accordance with your telephone conversation with Detective Michael McLaughlin, the interview is scheduled for 10:00 a.m. on Thursday, March 12, 1981 at Division of Gaming Enforcement headquarters located at 2465 South Broad Street in the Independence Mall Shopping Center in Trenton, New Jersey. The interview will be under oath.

I anticipate seeing you on March 12. If you have any questions about this matter, feel free to contact me at (609) 984-7222.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Eugene M. Schwartz
EUGENE M. SCHWARTZ
Deputy Attorney General

RJF:smb

cc: Bernard N. Katz, Esq.

CERTIFIED MAIL RRR

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

March 9th, 1981

Eugene M. Schwartz,
Deputy Attorney General
Department of Law and Public Safety
Division of Gaming Enforcement
CN 047
Trenton, NJ 08625

In Re: Gaming Enforcement Questioning of
Frank Gerace

Dear Mr. Schwartz:

Thank you for sending me a copy of your letter dated March 5th to Mr. Gerace.

In view of the fact that you anticipate the interview being under oath, it has been concluded that I should be present during the questioning.

March 12th involves a conflict on my calendar. I am, however, available Monday, March 16th. Mr. Gerace is similarly available. It is my understanding that he has already so advised your colleague, Detective McLaughlin. Accordingly, he and I will be present at 10:00 a.m. on Monday, March 16, 1981 at the address noted in your

letter of March 5th, and you will assume that the March 12th appointment is cancelled.

Very truly yours,

MERANZE, KATZ, SPEAR
AND WILDERMAN

By: BERNARD N. KATZ

BNK:k
UIW/SIU

CC: Mr. Frank Gerace

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT

IN THE MATTER OF THE
INVESTIGATIVE INTERVIEW OF FRANK GERACE

Independence Mall
South Broad Street
Trenton, New Jersey
March 16, 1981
10:05 A.M.

APPEARANCES:

JOHN J. DEGNAN, Attorney General
By: KENNETH J. FORTIER, Deputy Attorney General

For the Division

MERANZE, KATZ, SPEAR & WILDERMAN, ESQS.
By: BERNARD N. KATZ, ESQ.
For Local 54 & Frank Gerace

ALSO PRESENT:

DETECTIVE SERGEANT MICHAEL MCLAUGHLIN

By: CAROLYN CUMMINGS, C.S.R.

MR. FORTIER: Presently it is March 16th, 1981, a Monday. We are at the Division of Gaming Enforcement Headquarters in Trenton, New Jersey.

Present in the conference room at our headquarters is Mr. Frank Gerace, who I believe is President of Local 54—

MR. KATZ: That is correct.

MR. FORTIER: —his attorney, Mr. Bernard Katz; myself, Ken Fortier, a representative of the Division of Gaming Enforcement; as well as Detective Michael McLaughlin, who is also with the Division of Gaming Enforcement.

In conjunction with a registration that was filed with the Casino Control Commission by Local 54, the Division has deemed it necessary to conduct an interview with Mr. Frank Gerace, an official of that union. Mr. Gerace and his attorney, Mr. Katz, had been advised and scheduled today for that interview.

Both have been advised that it is the policy of the Division of Gaming Enforcement that counsel for an interviewee, as Mr. Gerace is, cannot be present during the actual interview. However, he may remain outside of any room we use for the interview, and should his client, in this case Mr. Gerace, at any time feel he requires the advice of or counseling of his attorney, he may leave the room to obtain that advice or counseling.

It is my understanding from Mr. Katz that his client will not participate in an interview under those circumstances. However, instead of myself speaking for Mr. Katz and his client, I'm certain Mr. Katz would like to put something on the record in that regard.

The only other thing I would add that I would like it also be on the record made known to Mr. Gerace and Mr. Katz that it is our interpretation of the Casino Control Act that the failure of Mr. Gerace to participate in this interview may precipate the loss of a license for Local 54 through the Casino Control Commission.

If you would like, Mr. Katz, to place something on the record, feel free.

MR. KATZ: Mr. Fortier, I gave my card to the Reporter and requested to either be given or to be allowed to purchase a copy of this transcript. May I assume that I will be able to purchase a copy of the transcript?

MR. FORTIER: Before you leave today, I will talk with those superiors to myself at the Division of Gaming Enforcement just to make sure because I don't want to tell you definitely yes and at some point come back and renege on that. I won't go any further.

MR. KATZ: For purposes of the record, my name is Bernard N. Katz. I'm a partner in the firm of Meranze, Katz, Spear & Wilderman. We have been for sometime general counsel for Local 54 HRE. I am a member of both the Pennsylvania and the New Jersey Bar.

My Pennsylvania address is on the card which I gave to the Court Reporter, and I'd appreciate correspondence being sent to that address rather than to the New Jersey address for purposes of personal convenience. Although, if it is sent to the New Jersey address, it will come to my attention, also.

We are participating in this interview, and we'll be happy to participate in this interview. Mr. Gerace is sitting here to be interviewed and you may ask any and all questions which you so desire of him.

So I want it understood that he is not refusing to be interviewed.

Before I get into the details of that, which I would like to put in the record, may I inquire of you, Mr. Fortier, for a specific statement as to the "purpose" of this interview and whether or not Mr. Gerace is personally a "target" of any particular investigation?

MR. FORTIER: Off-the-record.

(Discussion held off-the-record.)

MR. FORTIER: In regards to your question as to whether Mr. Gerace is a "target," before I answer that

I will only point out that this is not a criminal investigation. It is an administrative investigation so technically the term "target" I do not feel is even appropriate.

However, to answer the question, he is not a "target" by virtue of the fact that it's not a criminal investigation. It is an administrative procedure used by the Division of Gaming Enforcement to ascertain the qualifications of people applying for licenses with the Casino Control Commission. In this case Local 54 has filed a registration, and this is an interview to determine the qualifications of that union and its officials to represent the casino employees in Atlantic City.

MR. KATZ: Maybe I didn't make my question clear. I don't mean it necessarily in terms of criminal context. But in view of the fact that Mr. Gerace is the President of Local 54 and has been now for some time and in view of the fact that the registration was filed some time ago and in view of the fact that we now have collective bargaining agreements covering a wide variety of casinos and representing the welfare and interests of thousands of employees, is there anything in particular which has caused at this late date this interview or is this part of a normal periodic routine?

MR. FORTIER: Exactly. It is part of a normal periodic routine of the Division of Gaming Enforcement. It is standard operating procedure for us to review and evaluate the qualifications for people who need licenses in Atlantic City or unions that have to register to obtain a license.

The only other thing I would like to add is that I know prior to this I put on the record that a possible outcrop of Mr. Gerace's refusal to cooperate, if he does refuse to cooperate, and I know you have certain qualified language you want to put on the record. But I had indicated that potentially it could be used as a disqualifying factor if he does not cooperate.

I also pointed out that our position is that more specifically if he does not cooperate during the interview and

take part in the interview, the Division will take the position that it is a disqualifying factor under the Casino Control Act. So I will be a little more specific as to what the Division will do if he does not cooperate or if he does not participate in the interview.

MR. KATZ: I can't secondguess what the Division will do. Within the limitations of my abilities, all I can do is advise Mr. Gerace what, in our opinion, the Division has a right to do and what it does not have a right to do.

In that regard, I "resent" the implication of the coercive threat that is contained in your remarks as one in which you are attempting to create an intimidating atmosphere so as to force Mr. Gerace to forego what we have advised him are his rights.

MR. FORTIER: Mr. Katz—

MR. KATZ: Let me finish.

Incidentally—off-the-record.

(Discussion held off-the-record.)

MR. KATZ: I want one thing to be absolutely crystal clear. Neither Mr. Gerace nor Local 54 nor I, as counsel, in any way, shape, or form are refusing to cooperate. On the contrary, we are happy to give you any and all information that you desire and to answer any and all questions which you may have.

Mr. Gerace has driven an hour and forty-five minutes this morning to get here from Atlantic City fully prepared to cooperate and to testify. I have driven forty-five minutes to get here fully prepared to observe Mr. Gerace participating and testifying. The determination as to whether or not you are going to ask him questions is your determination, not ours.

I state on the record President Gerace will answer your questions, will cooperate, will give you any and all information which you seek in regard to any appropriate aspect of the functioning of Local 54 and its dealings in the casino-hotel industry and in regard to any aspects of the people who work for or on behalf of Local 54 or in regard to any other matter of relevance.

So if the determination as to whether you conduct this interview is your determination, Gerace is here prepared to answer.

Now, I know that you have stated on the record that you decline to conduct an interview unless counsel for Local 54 and Mr. Gerace gets out of the room. Since I have no intention of getting out of the room, it is my understanding that you decline to conduct the interview. To that end, I want the record and those who consider this transcript to fully understand that this is not a new issue. I have treated, begged, and treated your colleagues—although this is the first time I've had the pleasure to be with you, Mr. Fortier—am I pronouncing that right?

MR. FORTIER: Yes.

Mr. KATZ: But I have in my prior contact with your colleagues posed to them my extreme reservation concerning the unique procedure that you are establishing.

So that the record is clear, you should know that this issue of whether or not you would refuse to conduct an interview if counsel were present first arose in August of 1980 in response to the Division's request to interview Robert Lumio who is an officer of Local 54. In response to that request, we had a twofold problem. One was really a problem. One is justice procedural issue or this issue of basic constitutional rights.

Mr. Lumio, unfortunately, is beset by pernicious leukemia and as a result the determination of whether he should or should not be interviewed in the absence of counsel has been deferred as a result of his doctor's position as to what he could engage in and what he could not engage in.

However, during the period from August of 1980 up until this very minute, I have by letter and by telephone conversation repeated times commencing with my conversation prior to September 3rd, 1980, with Mr. Schwartz and following into correspondence of September 3rd, 1980, to Mr. Eugene Schwartz and thereafter with cor-

respondence to Mr. Eugene Schwartz and correspondence to the Director of the Division, Mr. Brown. I again and again stated that in my review and understanding of the Casino Control Law and any relevant law that there is no basis for the Division to arrogate to itself the procedure of requiring that labor officials who are not employees of any casino but are duly elected pursuant to Taft-Hartley and Landrum-Griffin law officials of their unions submit to under oath private questioning without their attorney being present. We have concluded that there is no such basis in your law and that on the contrary the implications of your law would strongly indicate that you have no right to do that.

For example, the Casino Control Commission is specifically given the right under the law to utilize the facilities of the grand jury system and the facilities of the grand jury system contain within them a statutorily created procedure under which questioning may be conducted of witnesses subpoenaed or directed to appear before the grand jury and the attorney for that particular person is not allowed in the room and may be required to wait outside. It seemed to us that what somebody in this maze of bureaucracy has done is to create its own grand jury system without benefit of the State Legislature.

Accordingly, we concluded that you do not have the right to impose as a condition of questioning the requirement that the questioned person's attorney not be present.

However, recognizing as we do the frailties to which any lawyer or lawyers can be subjected and the fact that at very best law is an art, not a science, we asked Mr. Schwartz, Mr. Brown, and Mr. Fortier, you, for guidance in some way, shape, or form. We said upon what statutory or other basis do you rely for having formulated the requirement that you refuse to question Mr. Gerace or Mr. Lumio or any other union official unless his or her attorney gets out of the room and leaves him alone with your detective sergeant and Court Reporter and you.

MR. FORTIER: Mr. Katz, I'm trying to give you as mucy leeway as possible on the record.

MR. KATZ: You wanted my position. I'm stating my position.

Listen, Ken, I don't want to engage in an argument with you, but you have said that this transcript is going to be examined by somebody. I want whoever examines it to be—

MR. FORTIER: Okay.

MR. KATZ: —to be hit by the fact that we're not refusing to cooperate. This is almost a catch-twenty-two sort of thing.

MR. FORTIER: I think you've made the point very clear. The only thing I want to point out is I was not here in the year 1980 so I really can't respond to some of the things of prior correspondence.

MR. KATZ: That's okay.

I would like to for purposes of the record direct whoever is going to review and make a determination of this their attention to the fact that your file should reflect a conversation between Mr. Schwartz and me prior to September 3rd, 1980; a letter from me to Mr. Schwartz of September 3rd, 1980; and thereafter an entire series of letters of, at least, three to five letters from me to Mr. Schwartz and/or Mr. Brown—copies went to Brown for a long period of time—in which in every letter I said please tell me as a member of the public and as an attorney who wants to do the right thing where you find the basis for this peculiar procedure that you are attempting to impose as a condition of asking Mr. Gerace questions.

I think the record should reflect—you are looking very impatient so I won't go into each date—the record should reflect in not one of the answers is there a response to my question.

If Mr. Schwartz also reduced our conversations to memos in your file, your file conversation memo should reflect that during not one of them would he give me an

answer. Here I stand eight months later after having first posed the question with your colleagues still having refused to give me an answer to it.

Now, under all of those circumstances for you to then say that you're going to conclude that Gerace is not cooperating seems, to me, to be little short of an affront. I say that respectfully, affectionately, and without attempting to cause chaos in your minds.

I want to conclude by saying if you can show me how in any way, shape, or form where my legal advice is incorrect, I will certainly reconsider. I want you to know that we have responsibly had a number of people working on this. We've had a memoranda done for our own internal use. Nobody has indicated to us any conceivable area in which we are incorrect or any conceivable area in which you have the right to impose this requirement.

Let me state Mr. Gerace is here. He'll answer any appropriate question you put to him starting right now at 10:36 a.m. on Monday, March 16th, 1981, but I do not propose to exit from the room. So the determination as to whether you will ask him a question is yours.

MR. FORTIER: Thank you very much.

If I can just respond just briefly, in the course of your comments you mentioned that I was somewhat creating a coercive atmosphere by telling the possible consequences of someone not participating in an interview. Just for the record, it was not meant to be coercive in any way. It was not my intent. I was just trying to be up front and frank so that no one was misled as to what can possibly happen.

MR. KATZ: Ken, Frank has a responsibility to nine thousand people to represent their interests and he also has a responsibility to follow the advise of counsel. For you to then say to him if you follow the advice of counsel there is a possible that we, the Division, may put into jeopardy your right to function on behalf of the representational interests of the workers who comprise your membership is inherently coercive.

MR. FORTIER: Mr. Katz, I was only putting on the record that I had no intent in that regard whatsoever. Although technically I consider it a matter of semantics as to whether who will or who will not cooperate, I will put it to you this way.

At this point I would like to begin asking Mr. Gerace questions regarding the registration of Local 54. However, you, Mr. Katz, will have to step outside the room before I can ask those questions.

MR. KATZ: You may ask Mr. Gerace any and all questions you want. I will remain in the room.

MR. FORTIER: It is our position, then, that we will not—it is our position that it is a failure to cooperate on the part of Mr. Gerace due to the fact that through his failure to cooperate on the part of—

MR. KATZ: By following his attorney's instructions?

MR. FORTIER: Following Mr. Katz if he doesn't want to.

Mr. Gerace, would you ask your attorney to leave the room?

I'll put that on the record. Apparently you will want to speak.

MR. KATZ: Once you ask Mr. Gerace to respond on the record, you have opened the interview and then you'll have to ask him the rest of the questions, which is okay with me.

I really wish—I can't understand the reason for this.

MR. FORTIER: Our position is that you have to leave the room if we can continue with the interview. I think you know that that's the position and that's where we stand.

MR. KATZ: Can you tell me the reason for getting your lack of statutory basis? From a policy point of view, what is the reason?

MR. FORTIER: Mr. Katz, I'm really not here—I don't feel I have to give you any reason.

Rather than even getting into that argument, the position is that your client will not answer questions unless you leave the room. Our position is we'd like to ask questions, but we cannot ask them unless you leave the room. I think the record now is complete with everything. We have statements.

MR. KATZ: You just misstated something.

MR. FORTIER: If I did, it wasn't intentional.

MR. KATZ: I'm certain it wasn't.

Our position is that Mr. Gerace will answer questions. Your position is that you will not ask him questions unless I leave the room, correct?

MR. FORTIER: Yes. Our position is that the interview cannot continue with you in the room, although technically it has not even begun. I would like to ask questions, but I cannot do it with you here. That's our problem.

MR. KATZ: Let me ask one more question, and we'll let it go. Can you tell me why?

MR. FORTIER: I am not going to tell you why. There's no judge here. There's really no point unless there is a legal authority here to decide it.

MR. KATZ: We're making a transcript that someone is going to read. I have a right to inquire why. Why are you taking this position?

MR. FORTIER: The position is you won't leave. That's clear on the record.

Just to make sure that I am being accurate, you will not leave the room so that I can ask questions of Mr. Gerace.

MR. KATZ: You can ask questions while I am here unless you tell me why you won't. But nobody has ever told me why. Honestly, Ken.

MR. FORTIER: Our position is that we have the authority.

MR. KATZ: Tell me where.

MR. FORTIER: Just to show the reverse, you allegedly have authority. When you talked to me over the

phone, I said we have authority as to why we cannot do this and you were going to send me the memo and—

MR. KATZ: You are a public attorney. We are members of the public looking to you for guidance. Would you please tell me on what basis you claim this right and why you claim it? In other words, tell me the statutory or other basis.

MR. FORTIER: The basis is within the Casino Control Commission Act.

MR. KATZ: I reviewed it and I can't find it.

MR. FORTIER: That will be the end of the transcript. Thank you.

Please, I do not have the statute in front of me and—

MR. KATZ: I have the statute. I'll be happy to give you the statute if you can find it.

MR. FORTIER: This will be the end of the interview. Thank you.

MR. KATZ: I would like to continue this further.

MR. FORTIER: Please.

MR. KATZ: You're cutting me off?

MR. FORTIER: Exactly.

MR. KATZ: How long should Mr. Gerace sit here until you determine whether you are going to ask him questions?

MR. FORTIER: We have already determined to ask questions and you won't leave.

That's the end of the transcript as far as I am concerned.

(Whereby, the discussion adjourned at 10:40 a.m.)

CERTIFICATE

I, CAROLYN CUMMINGS, a Certified Shorthand Reporter and Notary Public in and for the State of New Jersey, do hereby certify that the foregoing is a true and accurate transcript of the testimony taken at the time and place hereinbefore mentioned.

/s/ Carolyn Cummings
CAROLYN CUMMINGS
C.S.R.

Date: 3-18-81

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
CN 047
Trenton, New Jersey 08625

Robert Lumio
Secretary/Treasurer
Local 54
200 North Texas Avenue
Atlantic City, New Jersey 08401

Dear Mr. Lumio:

Please be advised the Division of Gaming Enforcement's investigation is still pending regarding the registration of Local 54 with the Casino Control Commission. As part of the investigative process, the Division has deemed it necessary to interview you regarding certain aspects of your union's registration and qualifications to represent licensed casino employees. Therefore, please accept this letter as a formal request for your presence at Division headquarters in Trenton on Thursday, April 30, 1981 at 10:00 a.m. for the interview. If I do not hear from you in this regard, I will assume that the date and time is acceptable. The interview will be under oath and transcribed. For the purposes of this interview, an attorney of your choosing may be present although none is required.

Looking forward to seeing you on the above date.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Kenneth Fortier
KENNETH J. FORTIER
Deputy Attorney General

KJF:sm
cc: Bernard Katz, Esq.

CERTIFIED MAIL

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pa. 19102
215-KIngsley 6-4183

April 24th, 1981

[CERTIFIED MAIL #425793-RRR]

Kenneth J. Fortier,
Deputy Attorney General
State of New Jersey
Department of Law and Public Safety
Division of Gaming Enforcement
CN 047
Trenton, NJ 08625

In Re: Robert Lumio

Dear Mr. Fortier:

This letter will confirm the conversation which I had on April 23rd, 1981 with "Sheila" of your office. Your letter [undated] requesting an interview with Mr. Lumio on April 30th, 1981 was received at the Union office and a copy was received at my office. Unfortunately and regretably, Mr. Lumio is in the hospital and we have absolutely no idea of what future course his condition will take. Under any circumstances, he is certainly unable to participate in an interview at the present time. You may feel free to verify these statements, either with the hospital or with Mr. Lumio's attending physician.

Incidentally, we are gratified by the change of position reflected in your letter, in which you note that you will now allow an attorney representing the interviewee to be present during the procedure.

At such time as Mr. Lumio is able to participate in the procedure requested by you, I shall be in touch with you further. Thank you for your cooperation.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By BERNARD N. KATZ

BNK/k
UIW/SIU

[SEAL]

State of New Jersey

DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF GAMING ENFORCEMENT
CN 047
Trenton, New Jersey 08625

April 30, 1981

Bernard N. Katz, Esq.
Meranze, Katz, Spear and Wilderman
Twelfth Floor
Lewis Tower Building
N.E. Cor. 15th & Locust Street
Philadelphia, Pennsylvania 19102

Re: Robert Lumio

Dear Mr. Katz:

This is to acknowledge receipt of your letter dated April 24, 1981. Unfortunately, I was out of the office and did not receive it until after I spoke with you by telephone on Tuesday, April 28, 1981, thereby necessitating this second communication. I do not know why you find even the most minimal request for cooperation a near impossibility, but even if I had read your letter prior to speaking to you, I still would not have known for certain which hospital Mr. Lumio was in or who his present attending physician was. As I am sure you are aware, it is not uncommon to change attending physicians or for hospitalization to occur in the place of debilitation. Before I attempted to verify the facts as you suggest in the manner you suggest, I must be certain of each before I send someone to Philadelphia. Notwithstanding your opinion, the information previously provided to the Division does not adequately reflect the degree of certainty required.

Additionally, your cooperation with the Division thus far certainly has not lent itself to the suggestion you would have advised us promptly of any change. I believe it was March 10, 1981 that we spoke and you agreed to provide me with some assurance of Mr. Lumio's continued inability to appear for an investigative interview, yet I have not heard from you in that regard until now. I can only reluctantly assume that if I had not taken the liberty of scheduling an interview with Lumio directly, I would not have heard from you. Also, how you can criticize me for not knowing your client's attending physician, when you did not even know yourself, is beyond me. But be that as it may, Mr. Katz, we are both attorneys and we are both professionals. We are also members of the New Jersey bar. In New Jersey, there is a mutual respect between attorneys for these reasons alone if for no other. Therefore, I ask that you maintain the same degree of professionalism that any New Jersey attorney would extend to you. Your tone and attitude on the telephone is both unprofessional and unbecoming a New Jersey attorney. I do not intend to become accustomed to your personal approach to advocacy, nor do I intend to act accordingly unless left no alternative. We are simply adversaries, not enemies.

In the spirit of mutual respect, I am writing to you primarily because of what I perceive as a misunderstanding in the second paragraph of your letter. Please be advised there has not been a change in our general position towards investigative interviews and the right of an attorney to be physically present. An indulgence has been granted for the purposes of this particular interview with this particular interviewee. The established

policy still remains in effect. I am certain I have made myself clear without more.

Very truly yours,

G. MICHAEL BROWN
Director

By /s/ Kenneth Fortier
KENNETH J. FORTIER
Deputy Attorney General

KJF:sm

LAW OFFICES
MERANZE, KATZ, SPEAR AND WILDERMAN
Twelfth Floor
Lewis Tower Building
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Philadelphia, Pa. 19102
215-KIngsley 6-4183

May 15, 1981

CERTIFIED MAIL—RRR

Kenneth J. Fortier, Esq.
Deputy Attorney General
Division of Gaming Enforcement
Department of Law & Public Safety
State of New Jersey
Trenton, New Jersey 08625

RE: Robert Lumio and Local 54, HRE

Dear Mr. Fortier:

I received your letter of April 30, 1981 sometime last week and, frankly, was puzzled by its contents. I simply could not understand why you sent it; nor—in view of what I had thought was an amiable conversation—could I understand the rather hostile "lecture" and your reference to yourself as an adversary.

Accordingly, your letter sat on my desk while I puzzled over whether to respond and correct the inaccuracies—whether to report again on the distressing deterioration of Mr. Lumio and whether to express my amazement that, on one hand, you indicated a change in position concerning the right of counsel to be present during an interview and then, in your April 30 communication, you state that you have not changed your policy; but that: "An indulgence has been granted for the purposes of this particular interview with this particular interviewee."

I have no intentions, at this juncture, of rebutting or responding to your statements seriatum. We have now had brought to our attention the letter, under printed date of May 11, 1981, to the Casino Control Commission from your office, seeking certain punitive action and making wholly unwarranted accusations and statements. Apparently the contents of this letter were released to the public media prior to a copy of the communication's being released to Local 54 or to me. The unfair attempt to conduct a public media condemnation needs no elaboration—obviously, your April 30, 1981 letter was sent as part of that undertaking.

Suffice it to say that the record should reflect that this office has offered to cooperate with your Division at every stage of your activities. Your perturbing denial of these facts is only exceeded by your distressing refusal to recognize the dire condition of Mr. Lumio. I trust that, by this time, you have satisfied yourself by verifying his condition with Dr. Viner, whose name I have supplied to you and your colleagues on several earlier occasions.

Very truly yours,

MERANZE, KATZ, SPEAR
& WILDERMAN

By: BERNARD N. KATZ

BNK:aw
UIW/SIU